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Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Department of Human Services
Division:	Administrative Services
Contact Person:	Jeffrey Blackshear
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Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	Jeffrey Blackshear
Address:	Office of General Counsel Citizens Plaza Building, 10 th Floor 400 Deaderick Street Nashville, Tennessee 37243-1403
Phone:	615-313-4731
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Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	Conference Room A, 7th Floor 531 Henley Street		
Address 2:			
City:	Knoxville		
Zip:	37902		
Hearing Date :	10/06/09		
Hearing Time:	6:30 PM	<input type="checkbox"/> CST <input checked="" type="checkbox"/> EST	

Address 1:	Citizens Plaza Building 2 nd Floor Board Room 400 Deaderick Street		
Address 2:			
City:	Nashville		
Zip:	37243-1403		
Hearing Date :	10/06/09		
Hearing Time:	6:30 PM	<input checked="" type="checkbox"/> CST <input type="checkbox"/> EST	

Address 1:	2 nd Floor Auditorium Donnelly J. Hill State Office Building 170 North Main Street		
Address 2:			
City:	Memphis		
Zip:	38103		
Hearing Date :	10/07/09		
Hearing Time:	6:30 PM	<input checked="" type="checkbox"/> CST <input type="checkbox"/> EST	

Additional Hearing Information:

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Revision Type (check all that apply):

☒ Amendment
☐ New
☐ Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables. Please enter only **ONE** Rule Number/RuleTitle per row.)

Chapter Number	Chapter Title
1240-09-01	Access to Public records of the Department of Human Services
Rule Number	Rule Title
1240-09-01-.02	Definitions
1240-09-01-.03	Requests for Access to Records
1240-09-01-.04	Requests for Reproduction of Records
1240-09-01-.05	Fees and Costs for Reproduction of Records
1240-09-01-.06	Payment for Records

Chapter Number	Chapter Title
Rule Number	Rule Title

Chapter Number	Chapter Title
Rule Number	Rule Title

Substance of Proposed Rules

Chapter 1240-09-01

Access to Public records of the Department of Human Services

Amendments

Rule 1240-09-01-.02, Definitions, is amended by deleting subparagraph (a) of paragraph (4) in its entirety, and substituting the following language, so that, as amended, paragraph (4), subparagraph (a) shall read as follows:

- (a) Any record of the Department that is deemed to be open to inspection of the public pursuant to the provisions of the defined in T.C.A. § 10-7-503(a)(1): The terms "public record or records" or "state record or records" means all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency.

Rule 1240-09-01-.02, Definitions, is amended by deleting part 1 of subparagraph (b) of paragraph (4) in its entirety, and by substituting the following language, so that, as amended, paragraph (4), subparagraph (b), part 1 shall read as follows:

1. protected as confidential or privileged pursuant to any state or federal law, regulation, or court order or court rule; or

Rule 1240-09-01-.02, Definitions, is amended by inserting a new paragraph (3) and re-numbering existing paragraphs (3), (4), and (5) accordingly; by deleting existing paragraph (6) and by adding new paragraphs (7), (8), (9), (10) and (11), so that, as amended, paragraphs (3), (7), (8), (9), (10) and (11) shall read as follows:

- (3) "Labor" means the time reasonably necessary for the Department's staff to produce the requested records and includes the time spent locating, reviewing, including the time required to assess the costs necessary for reproduction, redacting and reproducing the records.
- (7) "Records custodian" describes the office, official or employee lawfully responsible for the direct custody and care of a public record maintained by the Department of Human Services and is not necessarily the original preparer or producer of the record. The Department of Human Services may have more than one designated records custodian.
- (8) "Redacted record" means a public record otherwise open for public inspection from which protected information has been removed or obscured prior to release or inspection.
- (9) "Requestor" means a Tennessee citizen requesting access to or a copy of a public record.
- (10) "Routine Copy" is a paper copy of a record which, to be made, requires minimal staff assistance, i.e., pages which are either 8½ x 11 or 8½ x 14 and can be automatically printed from electronically stored records or automatically fed into a standard copier. Any records, even if stored electronically or magnetically, shall not be deemed

routine copies if it is necessary to print the copies of the record by means of a separate screen-print for each individual page of the record.

- (11) "Safe Harbor" is a presumption of reasonableness of the costs for records reproduction for a public records custodian who adheres to the policies and guidelines established by the Office of Open Records Counsel (OORC). Under this presumption, any fee related to the production of a copy or duplication that is charged by an entity required to provide access to public records pursuant to the Tennessee Public Records Act is presumed to be reasonable if the entity adopts and implements either the Schedule of Reasonable Charges or adopts charges pursuant to a separate schedule developed in accordance with the provisions of the Schedule of Reasonable Charges. The aggregation of frequent and multiple requests for copies of public records and the labor fees charged as the result of that aggregation are presumed to be reasonable if the entity adopts and implements the Frequent and Multiple Request Policy or a separate policy developed in accordance with the provisions of the Frequent and Multiple Request Policy.

Authority: T.C.A. §§ 4-5-202; 8-4-604(a)(3); 10-7-504(a)(7); 10-7-506(a); 71-1-105(4) and (12).

Rule 1240-09-01-.03, Requests for Access to Records, is amended by deleting paragraphs (1) and (2) in their entireties and by substituting the following language, so that, as amended, paragraph (1) shall read as follows:

- (1) An in-person request for access to public records of the Department shall be made during the regular business hours of the Department from 8:00 AM to 4:30 PM, Monday through Friday, except for holidays.
- (a) All requests for access to public records of the Department made in-person, or by any other means, shall be directed to the Records Custodian, State Office of the Department of Human Services, 400 Deaderick Street, 15th floor, Nashville, Tennessee 37243.
- (b) All requests for access to the Department's public records shall identify with reasonable specificity the record, set or system of records which is requested.
- (c) Requests will be processed on a first-come, first-served basis; provided, that the Commissioner, or the Commissioner's designee, may at any time alter this provision when circumstances warrant.

Rule 1240-09-01-.03, Requests for Access to Records, is amended by renumbering existing paragraph (3) as paragraph (2), by deleting subparagraph (a) of existing paragraph (3) in its entirety and by substituting the following language, so that, as amended, subparagraph (a) of paragraph (2) shall read as follows:

- (a) Review, Assessment and Redaction for Access to Records Requests.
1. Before providing access to the requested record, the Department's staff shall review the requested record or records, if located, as quickly as reasonably possible, consistent with the availability of appropriate staff and with regard to the scope of the records request, and make an assessment of the status of the records, the scope of the requested access and the time required for a response.
 2. Upon review, the Department's staff will redact any data or information prior to release of the record, or portion of the record, that it determines

has, or may have, confidential, privileged or otherwise protected material in the record that is subject to the Tennessee Public Records Act.

Rule 1240-09-01-.03, Requests for Access to Records, is amended by moving the following existing language that immediately follows part 6 of subparagraph (c) of existing paragraph (3)

then the Department shall inform the requesting person of the assessment and the reasonable approximate time required in complying with the request and a summary of the basis for the assessment regarding access to the records.

so that it immediately follows the language and punctuation of existing part 6, and by deleting the language "requesting person" in the cited language and by substituting instead the word "requestor", so that, as amended, part 6 shall read as follows:

6. For any reason, then the Department shall inform the requestor of the assessment and the reasonable approximate time required to comply with the request and provide a summary of the basis for the assessment regarding access to the records.

Authority: T.C.A. §§ 4-5-202; 8-4-604(a)(3); 10-7-504(a)(7); 10-7-506(a); 71-1-105(4) and (12).

Rule 1240-09-01-.04, Requests for Reproduction of Records, is amended by deleting paragraphs (1) and (2) in their entireties and by substituting the following language, so that, as amended, paragraphs (1) and (2) shall read as follows:

- (1) An in-person request for copies of public records of the Department shall be made during the regular business hours of the Department from 8:00 AM to 4:30 PM, Monday through Friday, except for holidays.
- (2)
 - (a) All requests for copies of public records of the Department made in-person, or by any other means, shall be directed to the Records Custodian, State Office of the Department of Human Services, 400 Deaderick Street, 15th floor, Nashville, Tennessee 37243.
 - (b) All requests for copies of the Department's public records must be made in writing to the Records Custodian of the Department of Human Services, and shall identify with reasonable specificity the record, set or system of records which is requested.
 - (c) Records requests will be processed on a first-come, first-served basis; provided, that the Commissioner, or the Commissioner's designee, may at any time alter this provision when circumstances warrant.

Rule 1240-09-01-.04, Requests for Reproduction of Records, is amended by deleting parts 1 and 2 of subparagraph (a) of paragraph (3) in their entireties, and by substituting the following language, so that, as amended, paragraph (3), subparagraph (a), parts 1 and 2 shall read as follows

1. Before reproducing copies of the requested record, the Department's staff shall review the requested record or records, if located, as quickly as reasonably possible consistent with the availability of appropriate staff and with regard to the scope of the records request, and make an assessment of the status and scope of the copy request and the time and costs required to locate, retrieve, review, redact, and reproduce the records.

2. Upon review, the Department's staff will redact any data or information prior to release of the record, or portion of the record, that it determines has, or may have, confidential, privileged or otherwise protected material in the record that is subject to the Tennessee Public Records Act.

Rule 1240-09-01-.04, Requests for Reproduction of Records, is amended by deleting part 6 of subparagraph (c) of paragraph (3) in its entirety and by substituting the following language, so that, as amended, part 6 of subparagraph (c) of paragraph (3) shall read as follows:

6. For any reason, then the Department shall inform the requestor of the assessment and the reasonable approximate time required to comply with the request, the costs to provide reproduction of the records and provide a summary of the basis for the assessment regarding access to and the costs of reproducing the records.

Authority: T.C.A. §§ 4-5-202; 8-4-604(a)(3); 10-7-504(a)(7); 10-7-506(a); 71-1-105(4) and (12).

Rule 1240-09-01-.05, Fees and Costs for Reproduction of Records, is amended by deleting paragraphs (1), (2), (4), (6), (7) and (10) in their entireties and substituting the following language, so that, as amended, paragraphs (1), (2), (4), (6), (7) and (10) shall read as follows:

- (1) The Records Custodian may assess a charge of fifteen cents (\$0.15) per page for each standard 8½ x 11 or 8½ x 14 black and white copy produced. The Records Custodian may assess a requestor a charge for a duplex copy that is the equivalent of the charge for two (2) separate copies. The Department may charge for all costs for reproduction of the record for the person or entity that has made the records request, whether the record is determined to be "routine" or "non-routine".
- (2) If a public record is maintained in color, the records custodian shall advise the requestor that the record can be produced in color if the requestor is willing to pay a charge higher than that of a black and white copy. If the requestor then requests a color copy, a records custodian may assess a charge of fifty cents (\$0.50) per page for each 8½ x 11 or 8½ x 14 color copy produced. Copies of sizes other than 8½ x 14 may be charged at fifty cents (\$.50) per page.
- (4) Copies made on electronic media shall be charged at a minimum of Five Dollars (\$5.00) per floppy disk containing 1.44 megabytes and One Dollar (\$1.00) per CD or DVD disk containing 650 megabytes or more, if these media are available.
- (6) The costs of reproduction shall include the following:
 - (a) Department staff labor, paper and other products and rental fees, including, but not limited to, the costs of:
 1. Staff labor costs utilized in locating, retrieving, reviewing, including labor utilized in reviewing and assessing the estimated cost to reproduce the record, redacting, and reproducing the record;
 2. Paper or other products such as, but not limited to, copy toner or toner cartridges, inks, electronic or magnetic media including, but not limited to floppy disks or compact disks etc., or any per copy charges incurred by the Department on any rented equipment;

- (b) Development of Computer Programs and Applications, including, but not limited to:
 - 1. Creation of a new or modified computer program or computer application that is necessary to put the records in a readable and reproducible format or in a specific reproducible format that is requested by the person or entity seeking copies of the record;
 - 2. In such case, the costs of staff, contractor, or consultant specialist time required for the production of the program or application and the costs of any new or modified software or hardware necessary for the production of the records may also be charged by the Department as costs of reproduction of the record;
 - (c) The costs for delivering the records by mail or any other delivery services or any other mechanisms or processes, electronic, magnetic or otherwise;
 - (d) Any other costs associated with actually reproducing the requested records, including all charges by vendors and contractors utilized to access or reproduce the records; and
 - (e) The records custodian shall utilize the most cost efficient method of producing the requested records.
- (7) Department Staff Labor Costs.
- (a) Department staff labor costs shall be charged at either the hourly rate, for the staff person's position as set by the Department of Human Resources, or, if paid on a salary basis based on the annual salary, excluding the first hour of labor and benefits, including the cost of any overtime that is necessary to reproduce the record.
 - (b) The hourly rate is that established by the Department of Human Resources for that staff person's position. If the staff person is paid on a salary basis, the rate that is based upon the annual base salary of the employee(s) excluding benefits. If an employee is not paid on an hourly basis, the hourly wage shall be determined by dividing the employee's annual base salary by the required hours to be worked per year which will be 1,950 hours for full-time employees. For example, an employee who is expected to work a 37.5 hour work week and receives \$39,000 in salary on an annual basis will be deemed to be paid \$20 per hour.
 - (c) When the aggregate number of requests made by a requestor within a calendar month exceeds four (4), the requestor will be charged a fee for any and all labor that is reasonably necessary to produce the copies of the requested records after informing the requestor that the aggregation limit has been met.
- (10) Copying by Requesting Person or Entity.
- (a) The Commissioner, or the Commissioner's designee, may, in his or her discretion, permit the requestor to supply the necessary equipment and supplies to make the requested copies where the records are housed or located for purposes of the records request, and all, or a portion, of the fees required by this Chapter may, in his or her discretion, be waived by the

Department, but no record shall be permitted to be removed from the Department's offices for this purpose without written approval by the Commissioner or the Commissioner's designee.

- (b) The Department may provide any personnel to observe the copying process permitted by this paragraph to protect the integrity of the records, and the costs of staff time necessary for this purpose may be charged pursuant to this Chapter.

Authority: T.C.A. §§ 4-5-202; 8-4-604(a)(3); 10-7-504(a)(7); 10-7-506(a); 71-1-105(4) and (12).

Rule 1240-09-01-.06, Payment for Records, is amended by deleting paragraphs (1), (2) and (3) in their entireties and substituting the following language, so that, as amended, paragraphs (1), (2) and (3) shall read as follows:

- (1) Prior to copies being made, or prior to developing a specific format for the reproduction of records, payment in full must be made to the Department, unless the payment is waived or delayed pursuant to rule 1240-09-01-.07 below.
- (2) Payment shall be made for payment of the costs of reproducing records only by cashier's check, money order, or other reliable means as determined by the Department.
- (3) The cashier's check or money order shall be made payable to the Treasurer, State of Tennessee, and delivered to the Records Custodian.

Authority: T.C.A. §§ 4-5-202; 8-4-604(a)(3); 10-7-504(a)(7); 10-7-506(a); 71-1-105(4) and (12).

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: _____

Signature: _____

Name of Officer: Jeffrey Blackshear

Assistant General Counsel

Title of Officer: Tennessee Department of Human Service

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

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Filed with the Department of State on: _____

Tre Hargett
Secretary of State